

Conference Engrossed

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 229

SENATE BILL 1280

AN ACT

AMENDING SECTION 44-1522, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 16; RELATING TO COMMERCIAL ELECTRONIC MAIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 44-1522, Arizona Revised Statutes, is amended to read:

44-1522. Unlawful practices; intended interpretation of provisions

A. The act, use, or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

B. The violation of CHAPTER 9, ARTICLE 16 OR chapter 19, article 1 of this title is declared to be an unlawful practice and subject to enforcement under this article.

C. It is the intent of the legislature, in construing the provisions of subsection A of this section, that the courts may use as a guide interpretations given by the federal trade commission and the federal courts to 15 United States Code sections 45, 52 and 55(a)(1).

Sec. 2. Title 44, chapter 9, Arizona Revised Statutes, is amended by adding article 16, to read:

ARTICLE 16. COMMERCIAL ELECTRONIC MAIL

44-1372. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COMMERCIAL ELECTRONIC MAIL" MEANS ELECTRONIC MAIL SENT FOR THE PURPOSE OF ENCOURAGING THE PURCHASE OR RENTAL OF, OR INVESTMENT IN, PROPERTY, GOODS OR SERVICES.

2. "ELECTRONIC MAIL" MEANS AN ELECTRONIC MESSAGE, EXECUTABLE PROGRAM OR COMPUTER FILE CONTAINING AN IMAGE OF A MESSAGE THAT IS TRANSMITTED BETWEEN TWO OR MORE COMPUTERS OR ELECTRONIC TERMINALS AND INCLUDES ELECTRONIC MESSAGES THAT ARE TRANSMITTED WITHIN OR BETWEEN COMPUTER NETWORKS.

3. "ELECTRONIC MAIL SERVICE PROVIDER" MEANS ANY PERSON WHO IS AN INTERMEDIARY IN SENDING OR RECEIVING ELECTRONIC MAIL AND WHO PROVIDES TO END USERS OF ELECTRONIC MAIL SERVICES THE ABILITY TO SEND OR RECEIVE ELECTRONIC MAIL.

4. "ESTABLISHED BUSINESS RELATIONSHIP" MEANS A PRIOR OR EXISTING RELATIONSHIP FORMED BY A VOLUNTARY COMMUNICATION BETWEEN A PERSON OR ENTITY AND THE RECIPIENT, WITH OR WITHOUT AN EXCHANGE OF CONSIDERATION, ON THE BASIS OF AN INQUIRY, APPLICATION, PURCHASE OR USE BY THE RECIPIENT REGARDING PRODUCTS OR SERVICES OFFERED BY THE PERSON OR ENTITY.

5. "SENDER" MEANS A PERSON WHO INITIATES AN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

6. "UNSOLICITED COMMERCIAL ELECTRONIC MAIL" MEANS A COMMERCIAL ELECTRONIC MAIL MESSAGE SENT, WITHOUT THE CONSENT OF THE RECIPIENT, BY A

1 PERSON WITH WHOM THE RECIPIENT DOES NOT HAVE AN ESTABLISHED BUSINESS
2 RELATIONSHIP.

3 44-1372.01. Regulations; powers of attorney general; cumulative
4 remedies

5 A. A PERSON SHALL NOT KNOWINGLY TRANSMIT COMMERCIAL ELECTRONIC MAIL
6 IF ANY OF THE FOLLOWING APPLY:

7 1. THE PERSON FALSIFIES ELECTRONIC MAIL TRANSMISSION INFORMATION OR
8 OTHER ROUTING INFORMATION FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

9 2. THE MAIL CONTAINS FALSE OR MISLEADING INFORMATION IN THE SUBJECT
10 LINE.

11 3. THE PERSON USES A THIRD PARTY'S INTERNET ADDRESS OR DOMAIN NAME
12 WITHOUT THE THIRD PARTY'S CONSENT FOR THE PURPOSE OF TRANSMITTING ELECTRONIC
13 MAIL IN A WAY THAT MAKES IT APPEAR THAT THE THIRD PARTY WAS THE SENDER OF THE
14 MAIL.

15 B. IF A PERSON SENDS UNSOLICITED COMMERCIAL ELECTRONIC MAIL OR
16 MAINTAINS A DATABASE FOR THE PURPOSE OF SENDING UNSOLICITED COMMERCIAL
17 ELECTRONIC MAIL, THE PERSON SHALL DO THE FOLLOWING:

18 1. USE THE EXACT CHARACTERS "ADV:" AS THE FIRST FOUR CHARACTERS IN THE
19 SUBJECT LINE OF THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

20 2. PROVIDE A PROCEDURE THAT ALLOWS RECIPIENTS, AT NO COST TO THE
21 RECIPIENTS, TO EASILY DO BOTH OF THE FOLLOWING:

22 (a) REMOVE THEMSELVES FROM THE SENDER'S ELECTRONIC MAIL ADDRESS LISTS
23 SO THE RECIPIENTS ARE NOT INCLUDED IN FUTURE ELECTRONIC MAILINGS FROM THE
24 SENDER. THE SENDER SHALL HAVE THREE BUSINESS DAYS TO REMOVE THE RECIPIENT'S
25 ELECTRONIC MAIL ADDRESS FROM THE SENDER'S ELECTRONIC MAIL ADDRESS LISTS SO
26 THE RECIPIENTS ARE NOT INCLUDED IN FUTURE ELECTRONIC MAILINGS FROM THE
27 SENDER.

28 (b) RESTRICT THE FUTURE SALE OR TRANSFER OF THE RECIPIENT'S ELECTRONIC
29 MAIL ADDRESS INFORMATION TO ANOTHER PERSON OR ORGANIZATION FOR THE PURPOSE
30 OF SENDING COMMERCIAL ELECTRONIC MAIL.

31 C. FAILURE TO COMPLY WITH THIS ARTICLE IS AN UNLAWFUL PRACTICE
32 PURSUANT TO SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE
33 APPROPRIATE ACTION AS PRESCRIBED BY CHAPTER 10, ARTICLE 7 OF THIS TITLE.

34 D. THIS ARTICLE IS IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES
35 AND PENALTIES AVAILABLE TO THIS STATE.

36 E. THE PROHIBITIONS IN THIS SECTION SHALL APPLY TO ANY PERSON DOING
37 BUSINESS IN THIS STATE AND TO ANY PERSON WHO TRANSMITS A COMMERCIAL
38 ELECTRONIC MAIL MESSAGE BY ANY OF THE FOLLOWING:

39 1. FROM A COMPUTER LOCATED IN THIS STATE.

40 2. TO AN ELECTRONIC MAIL ADDRESS THAT THE SENDER KNOWS, OR HAS REASON
41 TO KNOW, IS HELD BY A RESIDENT OF THIS STATE.

42 3. TO AN INTERACTIVE COMPUTER SERVICE WITH EQUIPMENT OR ITS PRINCIPAL
43 PLACE OF BUSINESS IN THIS STATE.

1 44-1372.02. Damages

2 A. A PERSON WHOSE PROPERTY OR PERSON IS INJURED BECAUSE OF A VIOLATION
3 OF THIS ARTICLE MAY RECOVER FOR ANY DAMAGES SUSTAINED, INCLUDING LOSS OF
4 PROFITS, AND THE COSTS INCURRED FROM THE SUIT.

5 B. IF AN INJURY RESULTS FROM THE INTENTIONAL TRANSMISSION OF
6 UNSOLICITED COMMERCIAL ELECTRONIC MAIL, THE INJURED PERSON MAY RECOVER
7 ATTORNEY FEES AND COSTS AND MAY CHOOSE, INSTEAD OF RECEIVING ACTUAL DAMAGES,
8 TO RECOVER TEN DOLLARS FOR EACH UNSOLICITED COMMERCIAL ELECTRONIC MAIL
9 MESSAGE TRANSMITTED IN VIOLATION OF THIS ARTICLE OR TWENTY-FIVE THOUSAND
10 DOLLARS, WHICHEVER IS LESS. THIS SUBSECTION DOES NOT APPLY TO AN ELECTRONIC
11 MAIL SERVICE PROVIDER.

12 C. NOTHING IN THIS ARTICLE CREATES A CAUSE OF ACTION OR A RIGHT TO
13 BRING AN ACTION AGAINST THE ELECTRONIC MAIL SERVICE PROVIDER FOR TRANSMITTING
14 UNSOLICITED COMMERCIAL ELECTRONIC MAIL OVER THE COMPUTER NETWORK.

15 D. IF AN INJURY RESULTS FROM THE INTENTIONAL TRANSMISSION OF
16 UNSOLICITED COMMERCIAL ELECTRONIC MAIL, AN INJURED ELECTRONIC MAIL SERVICE
17 PROVIDER MAY RECOVER ATTORNEY FEES AND COSTS AND MAY CHOOSE, INSTEAD OF
18 RECEIVING ACTUAL DAMAGES, TO RECOVER TEN DOLLARS FOR EACH UNSOLICITED
19 COMMERCIAL ELECTRONIC MAIL MESSAGE TRANSMITTED IN VIOLATION OF THIS ARTICLE
20 OR TWENTY-FIVE THOUSAND DOLLARS, WHICHEVER IS GREATER.

21 44-1372.03. Court proceedings; secrecy

22 AT THE REQUEST OF ANY PARTY TO AN ACTION BROUGHT PURSUANT TO THIS
23 SECTION, THE COURT MAY CONDUCT ALL LEGAL PROCEEDINGS IN A MANNER TO PROTECT
24 THE SECRECY AND SECURITY OF THE COMPUTER, COMPUTER NETWORK, COMPUTER DATA,
25 COMPUTER PROGRAM AND COMPUTER SOFTWARE INVOLVED IN ORDER TO PREVENT POSSIBLE
26 RECURRENCE OF THE SAME OR SIMILAR ACT BY ANOTHER PERSON AND TO PROTECT ANY
27 TRADE SECRETS OF ANY PARTY.

28 44-1372.04. Applicability

29 A. THIS ARTICLE DOES NOT APPLY TO ELECTRONIC MAIL MESSAGES IF ANY OF
30 THE FOLLOWING APPLIES:

31 1. THE SENDER IS AN ORGANIZATION USING ELECTRONIC MAIL TO COMMUNICATE
32 EXCLUSIVELY WITH EITHER OF THE FOLLOWING:

33 (a) MEMBERS OF THE ORGANIZATION.

34 (b) EMPLOYEES OR CONTRACTORS OF THE ORGANIZATION, OR BOTH.

35 2. THE SENDER HAS THE CONSENT OF THE RECIPIENT.

36 3. THE SENDER HAS AN ESTABLISHED BUSINESS RELATIONSHIP WITH THE
37 RECIPIENT.

38 4. THE COMMERCIAL ELECTRONIC MAIL MESSAGE IS THE RESULT OF AN ERROR.

39 5. AN INTERACTIVE COMPUTER SERVICE PROVIDER HAS ATTACHED AN
40 ADVERTISEMENT TO THE MESSAGE IN EXCHANGE FOR USE OF AN ELECTRONIC MAIL
41 ACCOUNT OR IF THE SENDER HAS AGREED TO THE ARRANGEMENT.

42 B. THIS ARTICLE DOES NOT APPLY TO AN ELECTRONIC MAIL SERVICE PROVIDER
43 IF EITHER OF THE FOLLOWING APPLY:

44 1. THE ELECTRONIC MAIL SERVICE PROVIDER IS AN INTERMEDIARY BETWEEN THE
45 SENDER AND THE RECIPIENT IN THE TRANSMISSION OF ELECTRONIC MAIL.

1 2. THE ELECTRONIC MAIL SERVICE PROVIDER TRANSMITS UNSOLICITED
2 COMMERCIAL ELECTRONIC MAIL OVER THE PROVIDER'S COMPUTER NETWORK OR
3 FACILITIES.

4 C. AN ELECTRONIC MAIL SERVICE PROVIDER MAY ESTABLISH AND ENFORCE A
5 POLICY TO BLOCK THE RECEIPT OR TRANSMISSION THROUGH ITS SERVICE OF ANY
6 COMMERCIAL ELECTRONIC MAIL THAT IT BELIEVES IS OR WILL BE SENT IN VIOLATION
7 OF THIS ARTICLE.

8 44-1372.05. Violation; classification

9 A PERSON WHO VIOLATES THIS ARTICLE IS GUILTY OF A CLASS 2 MISDEMEANOR.

APPROVED BY THE GOVERNOR MAY 16, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 16, 2003.

Passed the House April 7, 20 03,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House
Spencer L. Moore
Chief Clerk of the House

Passed the Senate March 4, 20 03,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

K. Bennett
President of the Senate
Norma Chastain
Asst. Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1280

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 8, 2003,

by the following vote: 55 Ayes,

1 Nays, 4 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 6, 2003

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Klu Blumeth
President of the Senate

Charrin B. Blanton
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 12 day of May, 2003

at 11:45 o'clock A. M.

Anders Hamrick
Secretary to the Governor

Approved this 16 day of

May, 2003,

at 10⁰⁰ o'clock A. M.

J. A. Nagle
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 16 day of May, 2003,

at 3:16 o'clock P. M.

Janice H. Brewer
Secretary of State

S.B. 1280